

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211371**DATE:** August 23, 1983**MATTER OF:** C.M.P. Corporation**DIGEST:**

Protest alleging that agency failed to refer a nonresponsibility determination to the Small Business Administration is denied since the agency did not determine the protester nonresponsible but rather evaluated the protester's technical proposal and found it less desirable than a competitor's under the solicitation's award criteria. Matters that normally are considered in responsibility determinations properly may be considered in the evaluation of proposals when negotiation procedures are used and an agency requires a relative assessment of competing offerors' abilities in those respects.

C.M.P. Corporation protests the Department of the Army's failure, before rejecting C.M.P.'s offer under request for proposals (RFP) No. DABT56-83-R-0034 for computer maintenance services, to refer the matter of the firm's capability to the Small Business Administration (SBA). We deny the protest.

The RFP was set aside for small businesses. Section M of the RFP set forth the technical evaluation factors and the manner in which proposals would be evaluated. The solicitation also stated that technical factors were of greater importance than price. The technical considerations included whether the offerors could provide the necessary high performance level; secure the specified replacement parts; meet reporting requirements; and provide three creditable references for maintenance services performed in the Washington, D.C. area.

Four companies submitted proposals. The proposals were evaluated by two people, and the final score assigned to each proposal was a composite of the two different totals. The proposal submitted by Systec, Inc. was the highest-rated technically and the lowest-priced, with C.M.P.'s ranked third overall. Award was made to Systec.

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C.M.P. complains that because the evaluation of proposals involved matters relating to the firm's ability to perform, that is, the offeror's responsibility, the Army should not have rejected C.M.P.'s offer without referral to the SBA under the certificate of competency (COC) program. C.M.P. cites the evaluation factor requiring references to show experience as a matter related to responsibility.

There is no legal merit to the protest. C.M.P. is correct that if an agency finds a small business to be nonresponsible to perform a contract, it must submit the matter to the SBA for a conclusive determination as to the responsibility of that firm. 15 U.S.C. § 637(b)(7) (Supp. IV 1980). In this respect, responsibility findings are concerned with whether an offeror has the minimum capacity to do the required work, Design Concepts, Inc., B-184754, December 24, 1975, 75-2 CPD 410, and involve, among other things, a prospective contractor's organization, technical experience, skills, equipment and facilities. 45 Comp. Gen. 4, 7 (1965).

In a negotiated procurement, however, matters that traditionally bear on responsibility may be used as evaluation factors and considered in the technical evaluation, if the agency's needs require a relative assessment of competing offerors' abilities in those respects. See Electrospace Systems, Inc., 58 Comp. Gen. 415, 424 (1979), 79-1 CPD 264. Here, the RFP clearly advised offerors that the relative evaluation of technical ability would include consideration of the specified factors, including an offeror's references where similar services were performed. As to this requirement for references, we note that the record shows C.M.P. was not disqualified from the competition because it could not furnish references, but only that this was taken into consideration in scoring the firm's proposal. The selection decision thus clearly did not involve a nonresponsibility determination regarding the protester, and referral to the SBA therefore was not required.

C.M.P. also suggests that the awardee, which received the maximum number of points available under the same evaluation factor, could not have provided three references. Our examination of the evaluation results shows, however, that Systec's offer, which was the lowest-priced one, was rated so high technically that the firm would have been selected for award even if it had not been assigned any points under the factor.

B-211371

The protest is denied.

for Harry R. Van Cleave
Comptroller General
of the United States